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IN THE

Supreme Court of the United States

October Term, 1961

No. 777

THE PEOPLE OF THE STATE OF NEW YORK, *ex rel.*
MORRIS FRIEDBERG,
Relator-Appellant,

—against—

HENRY SILBERGLITT, the Warden of the City Prison,
Borough of Manhattan,
Respondent-Respondent.

ON APPEAL FROM THE COURT OF APPEALS
OF THE STATE OF NEW YORK

JURISDICTIONAL STATEMENT

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Jurisdiction and Statement

The relator-appellant hereby appeals from a judgment of the Court of Appeals of the State of New York made and entered on the 16th day of November, 1961, which order denied the appellant leave to appeal to said Court from an order of the Supreme Court of the State of New York, Appellate Division, First Department, made and entered the 31st day of May, 1961, which unanimously and without opinion affirmed an order of the Supreme Court

of the State of New York, in and for the County of New York, Special Term, Part I, which dismissed a Writ of Habeas Corpus brought on behalf of the relator-appellant and made and entered on the 12th day of June, 1959.

Opinion Below

No opinions were written by the Supreme Court of the State of New York, Appellate Division, First Department and by the Court of Appeals of the State of New York. The opinion of Special Term, Part I, is contained in the record which will be attached hereto as an exhibit and marked "Exhibit A".

Jurisdiction

The relator-appellant has resisted an attempt by the State of Michigan for his extradition. This effort to extradite is structured on the provisions of Section 834 of the Code of Criminal Procedure of the State of New York. In essence the statute permits extradition where the demanding state asserts that its penal law has been violated and that the acts complained of had they occurred in the asylum state would also have been deemed criminal. The appellant, by affidavit, is charged with the crime of Grand Larceny.

Jurisdiction of the Supreme Court to review this decision by direct appeal is conferred by Title 28, United States Code, Section 1257(2).

The Novel Question Presented

A serious and novel question respecting the quantity and quality of the proof necessary to successfully extradite an individual pursuant to Section 834 of the Code of Criminal Procedure of the State of New York is in issue. Research would indicate this is a matter of first impression.

The Court below denied the relator due process of law in violation of Amendment XIV of the Constitution of the United States in that it limited its hearing to the questions of whether Morris Friedberg was the individual sought by the State of Michigan and whether the crime had been committed in that State. A broader scope of examination was required pursuant to the conditions contained in Section 834 of the Code of Criminal Procedure. The relator should have been allowed to establish that the alleged crime, charged in the State of Michigan, was not deemed criminal in the State of New York had the acts complained of occurred in New York.

Section 834 of the Code of Criminal Procedure denies to the relator or any one similarly situated procedural due process of law in contravention of Amendment XIV of the United States Constitution. It fails to define and delineate the extent and quality of the evidence required to effect an extradition pursuant to its requirements. In so doing, it becomes vague and substitutes surmise and conjecture for ascertainable standards of procedure and substance.

Statement

In January of 1959, Morris Friedberg met Robert Hanna, an employee of Drummy Oldsmobile Company and the sole

witness. Drummy is a Detroit automobile agency. At that time the relator-appellant purchased a car and paid for it.

It is now charged that approximately two weeks later, the relator called Mr. Hanna from New York City. The entire transaction and the alleged facts relating to it were oral and occurred during this conversation.

It is asserted that Friedberg ordered five Oldsmobiles and Hanna alleged that it was agreed that upon receipt of Friedberg's check for $5,000.00, the vehicles would be shipped. It is also alleged that upon delivery of the cars to Friedberg, the balance then outstanding would be paid.

On January 29, 1959, the relator drew a $5,000.00 check against the account of the Diamond News Service and forwarded it to Drummy. This check was returned after deposit ostensibly bearing the legend "uncollectible funds".

Hanna related that Friedberg, after learning of the fate of the check, immediately left for Detroit and personally delivered his certified draft to Drummy for $4,500.00. This was accepted and no effort was made then and there to enlist the Michigan criminal processes despite the relator's presence and amenability.

In the earlier part of February, 1959, Hanna and his employer arrived in New York City and a conference was had and held at a local police station. There a demand was made for the balance due. No arrest was made.

Approximately two weeks later, the parties convened at the Waldorf-Astoria Hotel. This was followed by the commencement of these proceedings.

The hearing elicited that Drummy, two days prior to its receipt of the check, had sent to the relator-appellant,

on its own volition, five statements of "Motor Vehicle Sale". These documents disclosed that the vehicles were unencumbered and fully paid. Several days subsequent to the return of the checks, the Drummy organization, voluntarily sent to the relator-appellant five "Certificates of Title" relating to the cars.

Mr. Hanna, after stating that the check had been returned because of "uncollectible funds" amended this and admitted that the dishonor was for "*uncollected funds*".

The Question Is Substantial and Novel

It is submitted that the question raised is one of substance and a definitive decision by this Court will tend to clarify an area of the law that is muddled and imprecise. It is unquestioned that the conventional method of extradition needs no further clarification. Prior to the passage of the so-called Uniform Extradition Act, the mere assertion that the extraditee had been in the demanding state and had violated its laws was sufficient to establish a prima facie case of extradition.

Under Section 834 of the Code of Criminal Procedure of the State of New York, upon which this action had been predicated, it is essential that the acts complained of and allegedly perpetrated by the potential extraditee were acts criminal in the demanding state but also were criminal had the same acts occurred in the asylum state.

The statute does not provide or delineate or define the requisite proof necessary to satisfy its interdictions. As a result there is great confusion amongst the several states who have adapted the so-called Uniform Extradition Act.

It is difficult to determine, if not impossible, what the demanding state is required to prove. It is infinitely more difficult to determine what latitude should be given to the extraditee in his resistance to extradition. Complication is further engendered in the instant case by the obvious fact that this extradition is not predicated upon either an Indictment or an Information but rather rests for its viability on a sworn affidavit.

It is submitted that by virtue of the muddled state of the law this appellant is being denied due process of law in violation of Amendment XIV of the Constitution of the United States.

It is submitted that the question presented here is substantial and vital and of great public importance.

Respectfully submitted,

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EXHIBIT A

Opinion by Mr. Justice Spector at Special Term

[New York Law Journal—June 15, 1959]

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[Same Title]

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Relator asks to have a warrant of extradition vacated. Counsel were heard and evidence on behalf of complainant was taken. It was conceded that the relator is the individual named in the warrant. From such testimony, I find that the acts of the relator, if occurring in the State of New York, would constitute a crime, as such does in the State of Michigan (C. C. P. sec. 834). It is not the function of the court to determine the guilt of the relator, only that the alleged acts would constitute a crime in the State of New York as well as in the state seeking extradition. Accordingly, the writ is dismissed and the prisoner is remanded.